Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1996

NANNETTE DENOUDEN, A UNIVERSITY STUDENT,

Petitioner Pro Se,

v.

THE UNIVERSITY OF WASHINGTON, et al.,

Respondents.

Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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70 pp

QUESTIONS PRESENTED FOR REVIEW

I. Title 20 U.S.C.A. §1232(g), Family Educational Rights and Privacy Act, is unconstitutional because it creates a separate and unequal classification system wherein only non-litigating students benefit from its provisions.

(a) Does FERPA, WAC 478-140-010, FRE 501, and Rule 502 (not enacted) work to create a "school-student communication privilege by implication," that forbids disclosure of personal identifiable information and reports which a student is required by law to divulge, in order to be officially enrolled at an educational institution?

(b) Does compelled disclosure of personal identifiable data give rise to an unreasonable administrative search and seizure, and violate the Fourth Amendment right to be secure in person, house, papers, and effects?

II. Does a nonconsensual reference to a magistrate judge, after the trial judge of record has refused to recuse himself, trigger the substantive due process clause and Fourteenth Amendment procedural protection of property in a state action claim?

(a) Did Congress confer power upon non-Article III judges to conduct evidentiary hearings on the merits as a "discovery" tool and moreover, would such hearing be properly classified as a "nondispositive" matter?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Nannette Denouden, Petitioner Pro Se

vs.

The University of Washington, Respondent

Respondent Board of Regents:
Daniel J. Evans
Scott D. Oki
Hon. J. Jerome Farris, (Ninth Circuit)
H. Jon Runstad
Mari J. Clark
Ann E. Daley
Samuel N. Stroum
Shelly Yap
Cindy Zehnder

Respondents:
Norman Rose, Dean
Steven Olswang, Provost
Daniel Jacoby, Professor
C. Patrick Morris, Professor (deceased 9/96)

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Organized Labor: Another American Monopoly
Registration number TXu 694-434..... 4

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OPINIONS BELOW

The Order of the United States Court of Appeals denying petitioners' Writ of Mandamus appears at Appendix 1 to this brief and is unpublished.

The Order of the District Court affirming the Ruling of the magistrate judge appears at Appendix 3 to this brief and is unpublished.

The Order of the Magistrate Judge denying ruling on federal questions appears at Appendix 4 to this brief and is unpublished.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered October 11, 1996. No petition for a rehearing was allowed. The Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment

Fourteenth Amendment

34 CFR Part 99 Section § 99.37(2) (Authority 20 U.S.C. 1232g(a)(5) (A) and (B))

20 § 1232(g)(h)

Federal Rule of Evidence 501

Rule 502 (not enacted) Required Reports Privileged by Statute

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28 U.S.C. § 455(a) (b)(1)(2)(3)(4)

28 U.S.C. § 636(b)(1)(A)

28 U.S.C.A. § 1651

FRCP 26(b)(1)

Title 17 § 511

Washington Administrative Code (WAC) 478-140-010

Revised Code of Washington (RCW) 18.19.180

RCW 34.08.050

STATEMENT OF THE CASE

This case was commenced by a lone university student, Nannette Denouden, in August 1995, and premised under provisions of Title 17 Copyrights, Family Educational Rights and Privacy Act (FERPA), 42 U.S.C. §1983 and §1985(c). The case involves student privacy and property right issues. Respondents admit to willfully making copies of petitioner's unpublished, copyrighted manuscripts without her foreknowledge, and retaining the same without permission. Respondents rely on "tradition," (a University of Washington tradition where professors keep copies of student works) to justify their action. Petitioner relies on Title 17 Copyrights since the manuscripts contain her original expressions and creative marshaling of facts. Petitioner created these works as assignments while a junior at the University.[1]

The spiral of events began in April 1996, when petitioner filed a recusal motion because of the trial court's access to extra-judicial information from, among others, the Hon. J. Jerome Farris of the Ninth Circuit Court of Appeals and current member of respondent University of Washington's Board of Regents; and because of an acknowledged personal and political friendship of "many, many years" between former Washington state governor and U.S. Senator, and now

[1] Revised Code of Washington (RCW) 28B.10.582 states that "'assignment' means any specific written, recorded, pictorial, artistic, or other academic task--including but not limited to term papers, theses, dissertations, essays, and reports that is intended for submission to any postsecondary institution--in fulfillment of the requirements of a degree, diploma, certificate, or course of study at any such educational institution." *Also*, petitioner was awarded

current president of respondent University's Board of Regents, Daniel J. Evans.

On June 11, petitioner participated in a deposition called at the request of respondent University and invoked what she reasonably perceived as constitutional, statutory, and common law privileges as *answers* to two (2) questions [App. 10]. Respondents ended the deposition alleging petitioner failed to answer, and three (3) days later filed a motion to compel and sanction. On June 24, petitioner filed a response, a good faith certificate, and a motion for ruling on federal questions of first impression raised during said deposition. A petition for a protective order was filed to protect from public disclosure petitioner's personal identifiable information [e.g., date of birth, street address, social security number].

But on July 16, 1996, the district court issued an Order of Reference that "all current & future nondispositive mtns" (sic) are to go to the magistrate judge, despite the previously filed Joint Status Report stating that "[t]he parties do not consent to the reference of this case to a Magistrate Judge." On July 18, the magistrate summarily denied petitioner's motions for a protective order and for a ruling on federal questions.

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copyright certificates for her unpublished manuscripts entitled Organized Labor: Another American Monopoly, which has been assigned the Registration number TXu 694-434, and for Congressional Termination of the Federal-Tribal Relationship--assigned the Registration number TXu 714-156.

Petitioner had filed a motion for summary judgment that was to be heard on July 19. However, the court never moved on petitioner's motion, despite respondent's later Declaration of July 23, which requested that the "court deny plaintiff's Motion to Stay Discovery until after her Motion for Summary Judgment is heard." Instead, petitioner was sanctioned two hundred and fifty ($250.00) dollars [App. 4]. Petitioner filed objections to the magistrate's rulings and sanctions on July 25; and on August 7, the district court upheld the magistrate judge's rulings without a *de novo* hearing [App. 3].

A petition for mandamus, prohibition, or relief in the alternative was filed with the Ninth Circuit on August 9 to, at the very least, grant review to preserve the integrity of the court. The Ninth Circuit denied petitioner's request on October 11, 1996 [App. 1].

REASONS FOR GRANTING THE WRIT

I. Compelled disclosure of personal identifiable information and reports violate the Fourth Amendment right to be secure in person, house, papers, and effects, and this gives rise to an unreasonable administrative search and seizure.

The national importance of having the Supreme Court exercise its discretionary jurisdiction is that the Court has never addressed the federal law question of whether or not FERPA, WAC 478-140-010, FRE 501, and Supreme Court Rule 502 (not enacted) create a "school-student communication privilege by implication." Likewise, the Court has not hitherto determined the appropriate levels of confidentiality and privacy under 20 § 1232(g) regarding information and reports that a student must submit when making application and attending an educational institution.

More specifically still, the Court has never weighed in on the issue of confidentiality and privacy regarding federal income tax returns since the Sixteenth Amendment first came into effect back in 1913. But *today* students must disclose income tax reports to universities. Such communication is considered a privileged communication under Washington state law when there is a personal expectation of privacy.

> The state test to determine if a person has a reasonable expectation of privacy is twofold: (1) Did the person exhibit an actual (subjective) expectation of privacy by seeking to preserve something as private? (2) Does society recognize

that expectation as reasonable? State v. Kealey 80 Wn. App. 162 (1995).

Petitioner respectfully ask the Court to be mindful of Article I, Section I of the Washington Constitution:

> **All political power is inherent in the people, and governments derive their powers from the consent of the governed, and are established to protect and maintain individual rights.**

Much of Washington's law on privileged communication is contained in decisional law and statutes. State lawmakers felt that many rules established concerning privileges "protect a specific relationship or interest as a matter of public policy." Further, evidentiary privileges pertaining to confidential communications foster interests or relationships deemed to be of such "sufficient social importance that non-disclosure of the communication is considered acceptable," even though the communication might aid in the course of litigation.[2]

For instance, in the case of Dike v. Dike, 75 Wn. 2d 1, 448 P.2d 490 the court posited that the address of a client is generally a privileged communication. Decisional law regarding privacy and privilege are likewise addressed in Hearst v. Hoppe, 90 Wn.2d 123, 135 (1978) and In Re: Rosier 105 Wn.2d 606 (1986).

The subjective expectation of privacy comes into play as 20 § 1232(g) (34 CFR Part 99, Section 99.37) gives petitioner the "right" to control what information a

[2] Professor Robert H. Aronson, Univ. of Washington School of Law The Law of Evidence in Washington (Seattle: Butterworth Legal Publishers, 1989) v-1.

university may make public. The subjective test first comes into effect when petitioner initiates the communication by disclosing the required personal records and reports to a registered university counselor. Then she exhibits a reasonable expectation of privacy by evoking provisions of 34 CFR Part 99, Section 99.37 and its state equivalent, WAC 478-140-010, when informing the University to not disclose her personal identifiable information. Thus petitioner exhibited an actual expectation of privacy by seeking to preserve her communication as a private communication.

As to whether or not society recognizes that "expectation as reasonable," petitioner turns to the Supreme Court, and to the case of Whalen v. Roe, 429 U.S. 589, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977). In *Whalen*, the Court held (in part) that:

> We are not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files. The collection of taxes, the distribution of welfare and social security benefits, the supervision of public health, the direction of our Armed Forces, and the enforcement of all criminal laws all require the orderly preservation of great quantities of information, much of which is personal in character and potentially embarrassing or harmful if disclosed. The right to collect and use such data is typically accompanied by a concomitant statutory or regulatory duty to avoid unwarranted disclosures. *Id.* at 605, 97 S.Ct. at 879.

Whalen is apposite to this case since the Supreme Court itself recognizes the need for privacy and confidentiality of required records and reports, and that concomitant statutes exist to avoid unwarranted disclosure. The concomitant statute in this instant case is FERPA. However, it is still yet to be decided whether Congress intended for FERPA to protect confidential information and reports that a student is *required* to disclose to an educational institution in order to be officially enrolled.

The Ninth Circuit's decision to not address the issue conflicts with the usual course of judicial proceedings. In the Third Circuit case of I.B.E.W. Local U. No. 5 v. U.S. Dept. of HUD 852 F.2d 87 (3rd Cir 1988) the court recognized the highly sensitive nature of "required reports," as it held (in part) that:

> Faced with an identifiable privacy interest and no countervailing public interest, we must conclude that the release of Social Security numbers would constitute a clearly unwarranted invasion of privacy and is therefore barred by Exemption 6 of 5 U.S.C. § 552(b)(6) (1982).

The *I.B.E.W.* court went on to state that:

> [Individuals] have a strong privacy interest in their social Security numbers. Congress has recognized this privacy interest by making unlawful any denial of a right, benefit, or privilege by a government agency because of an individual's refusal to disclose his Social Security number. Privacy Act of 1974, Pub.L. 93-579, § 7, 88 Stat. 1896, 1909 (1974), *reprinted in* 5

> U.S.C. § 552a note (1982). Moreover, in its report supporting the adoption of this provision, the Senate Committee stated that the extensive use of Social Security numbers as universal identifiers in both the public and private sectors is 'one of the most serious manifestations of privacy concerns in the Nation.' S.Rep. No. 1183, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Admin. News 6916, 6943.

The Ninth Circuit is in conflict with the Fourth Circuit on the very same important matter of privacy and confidentiality. To illustrate, in Greidinger v. Davis 900 F.2d 1344 (4th Cir. 1993) the court held (in part) that:

> Since the passage of the Privacy Act, an individual's concern over his SSN's confidentiality and misuse has become significantly more compelling. For example, armed with one's SSN, an unscrupulous individual could obtain a person's welfare benefits or Social Security benefits, order new checks at a new address on the person's checking account, obtain credit cards or even obtain the person's paycheck. In California, reported cases of fraud involving the use of SSNs have increased from 390 in 1988 to over 800 in 1991. Succinctly stated, the harm that can be inflicted from the disclosure of a SSN to an unscrupulous individual is alarming and potentially financially ruinous. Other issues include unlocking the door to another's financial [income tax] records, school records, financial aid records, and medical records. These are just

> examples and our review is by no means exhaustive; we highlight a few to elucidate the egregiousness of the harm.

Further, the Ninth Circuit's decision that this case did not warrant extraordinary relief to prohibit disclosure of personal information is in conflict with Re: W.R. Grace & Co.-Conn. (1993, CA2) 984 F2d 587. In *Re: Grace*, the Second Circuit held (in part) that:

> Mandamus was available to review trial court's discovery order compelling production of allegedly privileged documents, where privilege issue was important one of first impression, privilege would be lost if review would preclude use of discovery practice that undermine privilege.

Questions of confidentiality and privacy of required records and reports within the educational arena are important questions of federal law that have not been settled by this Court.

It is important to note, however, that a lower court has attempted to speak to the issue of confidentiality and privacy of required records and reports within the educational arena. Petitioner turns to the case of Bauer v. Kincaid, 759 F.Supp. 575 (W.D.Mo.1991). The *Bauer* case is indeed relevant to this instant case, and to the concomitant statute issue. The court held (in part) that:

> FERPA protects as confidential, information that a student is *required* to produce or divulge in conjunction with application and attendance at an

> an educational institution. FERPA also protects academic data generated while an individual is a student at an educational institution [emphasis added].

It seems that the *Bauer* court acknowledges that a school-student communication privilege by implication exists. The *Bauer* court makes a valiant attempt to define the realm of confidentiality and privacy between school and student within the legislative intent of FERPA.

Moreover, the *Bauer* decision is consistent with the reasoning found in Court Rule 502 (not enacted):

> A person, corporation, association, or other organization or entity, either public or private, making a return or report *required* [emphasis added] by law to be made has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if the law requiring it to be made so provides [...].

As the *Bauer* court acknowledges privacy and confidentiality between school and student under FERPA, likewise it seems to acknowledge that under FERPA a special classification exists solely for students (and their families, as the case may be). That is, FERPA was not intended to protect the non-student population, students who commit crimes, or individuals never associated with an educational institution. But by its sheer existence, FERPA sets student petitioner and the national student body apart from the general population.

In essence, the *Bauer* court has decided an important federal law question that supports petitioner's stance

that a school-student communication privilege exists under 20 § 1232(g). Petitioner reasonably believed that 20 § 1232(g) is the concomitant statute that protects her personal identifiable information from disclosure.

However, the Ninth Circuit's decision conflicts with the *Bauer* court's interpretation of 20 § 1232(g). Thus petitioner is left without specific parameters regarding confidentiality and privacy of personal information and reports that are required to be submitted. A conflict exists between the lower courts over a question of federal law that has never been addressed by this Court.

The crux of the state's argument has always been that since petitioner brought this lawsuit she must therefore break the school-student confidential communication, and disclose her personal identifiable information and records. When the Ninth Circuit denied review, it likewise affirmed this argument. It is ironic that respondent University is compelling petitioner to disclose personal information that respondent itself is forbidden to disclose pursuant to FERPA regulations.

Respondents are indeed aware of, and actively participate in, the subjective expectation of privacy regarding the communication of records and reports that must be submitted to them. For respondent University's own administrative policy, WAC 478-140-010:

> [I]s established to insure that information contained in such records is treated in a responsible manner with due regard to the personal nature of the information [App. 34].

The lower court did not grant comprehensive review of an important federal law question involving FERPA. But what is even more disturbing is that the Ninth Circuit's action is in conflict with past actions of this Court. For it was not long ago when this Court defined a Fourth Amendment search as a government intrusion into "an expectation of privacy that society is prepared to consider reasonable" United States v. Jacobsen, 466 U.S. 109, 113 (1984).

Moreover, the constitutionality of 20 § 1232(g) is in question, since the lower court agreed that petitioner relinquishes all FERPA protections because she is engaged in litigation against the University. Petitioner must therefore publicly disclose personal identifiable information and reports. By compelling disclosure, petitioner is now thrust into a separate and unequal classification system under FERPA.

The separate and unequal classification system is one wherein only non-litigating students enjoy full benefits and protection of FERPA. This separate and unequal classification system punishes student petitioner for lawfully seeking redress in the courts. The separate and unequal classification system destroys any future chances that petitioner may have for a reasonable expectation of privacy regarding her personal identifiable information and reports. Succinctly stated, this separate and unequal classification system under FERPA violates petitioner's right to the equal protection of an act of Congress.

Since the Ninth Circuit did not consider the egregiousness of harm that will result from denying any

type of relief or review, then now comes petitioner, and moves this Court to exercise its discretionary and supervisory powers, by way of writ of certiorari, or relief in the alternative. For it is important to decide whether or not FERPA, WAC 478-140-010, FRE 501, and 502 create a school-student communication privilege by implication, which forbids disclosure of personal identifiable information and required reports.

Court review is imperative to prevent a grave miscarriage of justice since the lower courts sanctioned compelled disclosure of personal information that is not even need by respondents to defend this claim. The "Declaration of Loretta M. Lamb In Response to Motion to Stay Discovery" emphatically states that:

> Defendants are not implying in any way that the personally identifiable information plaintiff sought to protect would establish a defense to this copyright lawsuit.

Petitioner naturally perceived harm from unwarranted disclosure since she sought a protective order. But the court ordered disclosure and *after* disclosure,

> [I]f plaintiff perceives possible harm from disclosure by defendants or their counsel of information obtained during discovery (e.g., disclosure of her Social Security number), plaintiff may seek the entry of a protective order limiting such further disclosure [App. 7].

It is reasonable to state that the cat would be out of the bag at the point of actual disclosure.

The lower court has likewise departed from the accepted reading of Rule 26(b) which defines the scope of discovery as nonprivileged matters "relevant to the subject matter involved in the pending action." Rule 26 (b) makes explicit that discovery must be "reasonably calculated to lead to the discovery of admissible evidence." The copyrighted manuscripts in question are *un*published works. So market value, loss of income and hence, income tax and "medical" records are irrelevant and admittedly, they will not even help to establish a defense to this action.

In 1978, the Court posited in Oppenheimer v. Sanders, 437 U.S. 340, 353, 98 S. Ct. 2380, 57 L.Ed. 2d 253 that discovery is not without ultimate and necessary boundaries. And as previously noted in the 1993 case of *Re: W.R. Grace*, mandamus is appropriate to review an order compelling disclosure of privileged documents, especially when the (school-student communication) privilege issue has never been decided before.

The Ninth Circuit is in conflict with yet another circuit, as seen in the case of In re: Fink, 876 F.2d 84 (11th Cir. 1989). In *Re: Fink*, the court held that,

> In the context of discovery orders which will compromise a claim of privilege or invasion of privacy rights, mandamus has been found appropriate due to the importance of the privilege if discovery is obtained there is difficulty of obtaining effective review once the privileged information has been made public.

Again, Court review would determine whether or not it

is constitutional to have a separate and unequal classification system under 20 § 1232(g) and hence, whether denial of mandamus relief was appropriate.

The courts have not heretofore examined the doctrine of "university tradition," which allows professors to retain copies of petitioner's intellectual property for personal use. The horn of the dilemma is just which statute takes precedence in this case, Title 17 or 20 § 1232(g)? But 20 § 1232(g)(B)(I) is clear as it states that:

> The term "educational records" does not include--
> (I) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible to any person except a substitute.

The courts have never before reviewed the university (of Washington) tradition of retaining an *under*graduate's intellectual property in light of Title 17 and 20 § 1232(g) statutory provisions.

Respondents contend two things. First, the "fair use doctrine" applies to petitioner's copyrighted works and second, professors can retain copies of her intellectual property because FERPA classifies these works as "student records" [App. 24]. Apparently the Court would write on a clean slate concerning this issue. For even respondents admit that "giving copy back to student would set bad precedent (sic)" [App. 24]. Respondents, then, consider petitioner's claim to be a novel one, and they likewise fear the courts disturbing their "tradition."

Essentially when the appellate court denied petitioner's request for relief it let stand the lower court's determination that student petitioner does not have the fundamental right to be secure in her person (social security number/identifier) house (street address) papers (copyrighted manuscripts) and effects (medical and income tax records, federal and state privileges).

The appellate court did not address the federal law question of whether or not compelled disclosure of personal identifiable information and reports give rise to an unreasonable administrative search and seizure. But an unreasonable administrative search and seizure of petitioner's personal identifiable information exist. Respondent University seeks to publicly disclosure records and reports which are admittedly not reasonably calculated to lead to the discovery of admissible evidence, or will even establish a defense to this lawsuit. But as the *I.B.E.W.* court held, when there is "no countervailing public interest" or logical reason for the disclosure, then compelling disclosure of personal identifiable information:

> [C]onstitutes a clearly unwarranted invasion of privacy and is therefore barred by Exemption 6 of 5 U.S.C. § 552(b)(6) (1982).

And as seen in *Jacobsen*, a Fourth Amendment search occurs when the government intrudes into "an expectation of privacy that society is prepared to consider reasonable." The Ninth Circuit is conflict with other circuits on this very same important issue.

II. Does a nonconsensual reference to a magistrate judge, after the trial judge of record has refused to recuse himself, trigger the substantive due process clause and Fourteenth Amendment procedural protection of property in a state action claim?

Petitioner's copyright action is within purview of Fourteenth Amendment procedural protection of property because a sufficient close nexus exists between the challenged action and the state itself. To illustrate, petitioner challenges the taking of her copyrighted intellectual property by respondent University. The University is indeed a state agency under RCW 34.08.050 [App. 34], 42 USC § 2000a-1, and a recipient of Title IV assistance---school code 003798. This should be sufficient reason to treat any University action against petitioner as an action by the state itself.

The trial court made a nonconsensual reference of this state action claim to a magistrate pursuant to 28 U.S.C. § 636(b)(1)(A). The significance of Court review here would be to alleviate the over broad reading and misuse of the "additional duties" provisions of § 636(b)(1)(A). It is yet to be determined whether or not Congress intended for magistrate judges to decide state action claims where matters pertaining thereto are dispositive. For petitioner's manuscripts and personal information [e.g., SSN identifier] are property, are dispositive by compelled disclosure and forced relinquishment to the state. As previously noted, the state subjects petitioner's copyrighted manuscripts to "fair use doctrine" and likewise views them as "school records." The state can not have it both ways.

The lower court's decision to deny review is in direct conflict with relevant decisions of this Court and the Fifth Circuit. The Ninth Circuit failed to recognize that:

> [T]he Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests a person has already acquired in specific benefits. These interest--property interests---may take many forms. Board of Regents v. Roth, 408 U.S. 564, 576, 92 S.Ct. 2701, 2708, 33 L.Ed.2d 548 (1972). Similarly, the substantive due process analysis is not triggered unless there is a property or liberty interest taken by state action. Levitt v. University of Texas at El Paso, 759 F.2d 1224, 1231 (5th Cir.)

Additionally, the nonconsensual reference of this state action claim to a magistrate judge, after the trial judge of record refused to recuse himself, circumvents the legislative intent of 28 U.S.C. § 144 § 455. Reference of this case to a magistrate judge is a way to avoid right out recusal when partiality is at issue, since the trial judge in question still maintains close control over the case.

> The goal of 144 and 455 is to promote public confidence in the judicial system by avoiding even the appearance of partiality. Liljeberg v. Health Services Acquisition Corp., — U.S. —, —, 108 S.Ct 2194, 2203, 100 L.Ed.2d 855 (1988) aff'g 796 F.2d (5th Cir. 1986).

As previously noted, recusal was sought because of the

court's extra-judicial relationship with respondent Daniel Evans, and with respondent Hon. J. Jerome Farris of the Ninth Circuit. In addition, petitioner has reason to question the relationship between respondent Evans and the Honorable Robert R. Beezer. The Hon. Beezer was one (1) of three (3) circuit judges whose October 11, 1996, Opinion denied petitioner the extraordinary remedy of mandamus and any reconsideration [App. 1].

To just illustrate the trial court's relationship to respondent Evans, petitioner notes that the trial judge's personal financial contributions and association played a role in the "Dan Evans Senate Committee" and "Dan Evans for Governor Committee." Further, the trial judge's law firm brokered a real estate deal for respondent Evans; plus the trial judge chaired a committee for respondent University as well.

By refusing to grant any review, the Ninth Circuit departed from the accepted course of judicial proceedings. And this departure conflicts with how other circuits addressed the very same issue.

To illustrate,

> Few situations are more appropriate for mandamus than a judge's clearly wrongful refusal to disqualify himself. In re: International Business Machines Corp., C.A. 2 (N.Y.) 1980, 618 F. 2d 923.
>
> Allegations in affidavits to effect that for many years judge had had (sic) a close personal and

> political relationship with a United States senator whose political interests in the past had been and in the future may be in conflict with the defendants and that the defendants directly and openly opposed the judge's nomination to federal bench were legally sufficient to justify judge in recusing himself on ground of bias. U.S. v. Moore D.C. W.Va. 1976, 405 F.Supp. 771

Court review would determine whether or not it is constitutional to use one statute, the Federal Magistrate's Act, to circumvent the legislative intent of another, 28 U.S.C. § 144 and § 455. Court review would likewise determine whether petitioner's original prayer was appropriately denied. Respectfully, Court review would help to preserve the integrity of the lower courts.

It is still yet to be determined whether Congress conferred authority upon non-Article III judges to conduct *nonconsensual* civil evidentiary hearings on the merits as a "discovery" tool and whether such hearing is properly classified as a "nondispositive (sic)" matter.

In this instant case, the magistrate judge ordered a nonconsensual evidentiary hearing to commence "in chambers." And there, in chambers, the magistrate judge will "...resolve any disputes as they arise" [App. 8]. The magistrate judge will rule on all motions, objections, arguments, evidence and claims to state, federal, and constitutional privileges made by petitioner. Succinctly stated, the magistrate judge will proceed pursuant to the "additional duties" provision of § 636(b)(1)(A) and he will do so since the Ninth Circuit denied petitioner's request for relief.

But petitioner turns to Roberts v. Manson, 876 F.2d 670 (8th Cir. 1989). The *Roberts'* court held (in part) that a "[m]agistrate did not have jurisdiction to hear evidence and arguments," and that:

> Nonconsensual evidentiary hearings are not 'additional duties,' within the meaning of the statute allowing magistrates to perform additional duties not inconsistent with Federal Constitutional and laws, and thus magistrate did not have jurisdiction to hear evidence and arguments...where [parties] did not consent to magistrate's jurisdiction. 28 U.S.C.A. § 636(b)(3). Section 636(b)(1)(A) allows *pre-trial* matters to be referred to a magistrate to be heard and determined. This court finds that jurisdiction was not proper under any of the provisions of 28 U.S.C. § 636 (1982 & Supp. IV 1986). It is beyond question that magistrates are not article III judges and therefore have jurisdiction only pursuant to statute. *See Wingo v. Wedding*, 418 U.S. 461, 94 S.Ct. 2842, 41 L.Ed.2d 879 (1974).

The Ninth Circuit is in direct conflict with the *Robert's* court, and with the *Wingo* Court on the very same important matter. Court review would ascertain whether nonconsensual civil evidentiary hearings violate petitioner's right to due process, and to the Fourteenth Amendment procedural protection of property. Finally, Court review would alleviate the over broad reading and misuse of the "additional duties" provisions of 28 U.S.C. § 636(b)(1)(A).

CONCLUSION

Petitioner submits that the Ninth Circuit's decision to not grant any review is in direct conflict with relevant decisions of this Court, and with decisions of other appellate courts on the very same important matter.

Finally, petition turns to Hartley Pen Co. v. United States 287 F.2d (9th Cir. 1961) wherein the Ninth Circuit held (in part) that:

> Power granted to Court of Appeals under the All Writs Act is not to be reserved for 'cause celebre' but is available in ordinary cases within jurisdiction of court if ordinary remedies are inadequate and there are presented exceptional and extraordinary circumstances which require issuance of extraordinary writ to prevent grave miscarriage of justice. 28 U.S.C.A. § 1651

Petitioner humbly seeks a writ of certiorari or, in the alternative, mandates to the Ninth Circuit Court of Appeals to address the federal law questions, the trial court's refusal to recuse himself, and the relationship of respondent Evans to the Honorable Robert R. Beezer.

DATED: March 20th 1997.

Respectfully submitted,

Nannette Denouden
P.O. Box 13123
Mill Creek, WA 98082
(206) 672-6817

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Appendix 34 RCW 34.08.050

App. 1

Filed October 11, 1996

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 96-70644

NANNETTE DENOUDEN

PETITIONER,

vs.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

RESPONDENT,

UNIVERSITY OF WASHINGTON, et al.,
Real Parties of Interest.

Appeal from the Orders of the United States
District Court for the Western District of
Washington at Seattle
DC# CV-95-1281

Before: Beezer, Kozinski and Kleinfield,
Circuit Judges

Opinion Filed October 11, 1996

OPINION OF THE COURT

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. See Bauman v. United States District Court, 557 F. 2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

A True Copy:
Teste:

Clerk of the United States Court
of Appeals for the Ninth Circuit

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Nannette Denouden	:	
Plaintiff,	:	NO. C95-1281Z
v.	:	
University of Washington, et al.,	:	MINUTE ORDER
Defendants.	:	

(Filed and Entered August 7, 1996)

The following Minute Order is made by the direction of the Court, the Honorable Thomas S. Zilly, U. S. District Judge:

The Court hereby DENIES plaintiff's motion setting forth her objections, docket no. 110, to Magistrate Judge Weinberg's Order on five motions relating to plaintiff's deposition, docket no. 103. The Court finds no basis on which to reject or to alter the conclusions reached in Judge Weinberg's Order.

The Clerk of the Court is directed to send copies of this Minute Order to plaintiff pro se and to all counsel of record.

Filed and entered this 7th day of August, 1996.

BRUCE RIFKIN, Clerk

/s/ Casey Condon
Casey Condon
Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Nannette Denouden Plaintiff, v. University of Washington, et al., Defendants.	:	CASE NO. C95-1281Z Order on Five Pending Motions Relating to Plaintiff's Deposition

(Filed and Entered July 18, 1996)

This order constitutes the court's ruling on the following five motions, all of which relate to the taking of plaintiff's deposition:

#48 Defendant's Motion to Compel Discovery and For Sanctions

#53 Plaintiff's Motion for a Protective Order Under Rule 26(c) and Rule (d) (3)-- Unreasonable and Irrelevant Requests for Discovery in Deposition and Interrogatories

#54 Plaintiff's Motion for a Ruling on Federal Questions in Response to Defendant's Motion to Compel and for Sanctions

#59 Plaintiff's Motion to Suppress the Deposition of June 11, 1996

#60 Plaintiff's Motion for Expenses and Fees Incurred in Opposition to Defendant's

Motion to Compel and for Sanctions Under Rule 37

The court has reviewed each of these motion, and the various filings by all parties relating to each motion. The court FINDS and ORDERS as follows:

(1) Alleged Defects in Notice of Deposition. Plaintiff's objections to the form of the Notice of Deposition are de minimis and technical, and were waived by her attendance at the deposition. The court declines plaintiff's invitation to speculate as to whether defense counsel was actually ready and able to conduct a full deposition. It is sufficient to note that defense counsel acted reasonably in terminating the deposition because plaintiff unreasonable refused to answer many proper questions.

(2) Plaintiff's Motion to Suppress the Deposition of June 11, 1996 (docket no. 59) is DENIED. In addition to her objections to the Notice of Deposition (discussed above), plaintiff seems to raise an issue as to the accuracy of the transcript prepared by the court reporter retained by defense counsel. But these objections seem to be entirely pro forma. Plaintiff makes no representations as to specific inaccuracies in the transcript. In any event, the transcript is of limited relevance, because the deposition was aborted due to plaintiff's refusal to answer questions. It is useful to the court only in setting forth the questions she refused to answer, and her reasons for refusing. These appear not only on the deposition manuscript, but also in the brief-

ing the parties have provided on these motions, and they appear to be identical in all relevant respects.

(3) Plaintiff's Relevance Objections. Plaintiff refused to answer many of the questions asked at her deposition, asserting that the information sought was not relevant. Plaintiff's position is without merit. The scope of proper discovery is quite broad, and includes not only admissible evidence, but also information which "appears reasonably calculated to lead to the discovery of admissible evidence." Local Rule Cr 26 (b) (1). The questions as to plaintiff's street address, Social Security number, and date of birth, and the other questions which plaintiff refused to answer, meet this standard. Plaintiff could not properly interpose objections to these questions and was required to answer them.

(4) Plaintiff's Privilege Objections. Plaintiff's privilege objections under F.E.R.P.A., and on other grounds, are without merit. Even if she has provided certain information previously to the University of Washington as a student, and even if there are restrictions on the University's disclosure of information so provide, that in no way prohibits counsel for the University from seeking the same information in the course of a deposition. Limitations on the **State's** obligation to make disclosures, under Washington's Public Disclosure Act, similarly do not excuse plaintiff from answering relevant questions relating to the same information.

(5) "Plaintiff's Motion for a Protective Order under Rule 26(c) and Rule 30 (d) (3)" (docket no. 53) is therefore DENIED, but subject to two limitations. First,

to the extent that plaintiff furnishes information in response to deposition question, she need not repeat the same information in responding to interrogatories. Secondly, if plaintiff perceives possible harm from disclosure by defendants or their counsel of information obtained during discovery (e.g., disclosure of her Social Security number), plaintiff may seek the entry of a protective order limiting such further disclosure. Before seeking such an order, plaintiff must attempt to reach agreement on its terms with counsel for defendant, as required in Local Rule CR 26(c).

(6) Defendant's Motion to Compel Discovery and for Sanctions (docket no. 48). The court finds that plaintiff has unreasonably and improperly failed to cooperate in the conduct of her deposition. Defendant's Motion to Compel Discovery and for Sanctions is therefore GRANTED, to the extent and subject to the limitations set forth in this order.

Plaintiff shall pay $250.00 to defendants, within 60 days after entry of this order. Plaintiff's Motion for Expenses and Fees Incurred in Opposition to Defendant's Motion to Compel (docket no. 60) is DENIED.

Defendants' request that plaintiff not be permitted to conduct any discovery, or file any pleadings, until these sanctions are paid, is DENIED. If plaintiff fails to pay the sanctions within 60 days, however, defendants may so apprise the court, and apply for appropriate additional relief.

In the event defendants see fit to reconvene plaintiff's deposition, plaintiff is ORDERED to cooperate fully in the taking of the deposition. A failure to comply with this order could result in imposition of further sanctions prescribed in Local Rule CR 37.

(7) Plaintiff's Motion for Expenses and Fees Incurred in Opposition to Defendant's Motion to Compel (docket no. 60) is DENIED.

(8) Despite this order, it appears there is a significant possibility that further problems will arise when plaintiff's deposition is reconvened, and that prompt resolutions of any conflicts will facilitate the completion of that deposition. Accordingly, it is ORDERED that any reconvened deposition shall be conducted in the United States Courthouse in Seattle, Counsel for defendants may arrange for the time and place of that deposition with plaintiff and with this court's deputy clerk, Ms. Judy Nothern, (206) 553-4702. Plaintiff shall cooperate in every way possible in the scheduling of that reconvened deposition. It shall be conducted not later than August 9, 1996. The magistrate judge shall not be present throughout the deposition, but will remain available to resolve any disputes as they arise. If plaintiff unreasonably refuses to answer the questions posed to her, or otherwise fails to cooperate, she will be subject to the imposition of additional sanctions.

(9) Method of Recording of Deposition. Local Rule CR 30(b)(2) and (3) shall govern the manner in which the deposition is recorded. Counsel for defendants shall designate, arrange for, and pay for, the method of

recording and transcription. As provided in the rule, plaintiff may make parallel arrangements for an additional method of recording, provided that she gives prior notice to defense counsel, it is a method permitted by the rules, and is done her expense. Plaintiff shall cooperate promptly in making any required corrections and in certifying the record prepared as arranged by defense counsel. Plaintiff may arrange for the preparation of an additional record, at her expense.

(10) Plaintiff's "Motion for a Ruling on Federal Question" (docket no. 54). Except as otherwise provided in this order, this motion is DENIED.

(11) The Clerk shall direct copies of this order to plaintiff, to counsel for defendants, and to the Hon. Thomas S. Zilly.

DATED this 18 day of July, 1996

/s/ John L. Weinberg
John L. Weinberg
United States Magistrate Judge

UNITED STATES DISTRICT COURT, WESTERN DISTRICT AT SEATTLE

Nannette Denouden, Plaintiff,	:	
vs.	:	No. C95-1281Z
University Of Washington; Clark C. Shores, Professor Dan Jacoby; Dean Norman Rose; Dr. Steven Olswang; Professor C. Patrick Morris, Defendants.	:	

DEPOSITION OF NANNETTE DENOUDEN
Tuesday, June 11, 1996

APPEARANCES

For Defendants: MS. LORETTA LAMB
Assistant Attorney General
Torts Division
900 4th Avenue
Ste. 2000, TB-14
Seattle, Washington 98164

For Plaintiff: Pro Se

Reported by: Corri L. René, RPR
License No. 388RD

INDEX OF EXAMINATION

PAGE/LINE

NANNETTE DENOUDEN

Examination by Ms. Lamb 3 14

INDEX OF EXHIBITS

No exhibits offered.

BE IT REMEMBERED that the deposition upon oral examination of NANNETTE DENOUDEN was taken on Tuesday, June 11, 1996, at 2200 Bank of California, Seattle, Washington, before Corri René, Notary Public in and for the State of Washington..

NANNETTE DENOUDEN, having been first duly sworn upon oath by the notary, testified as follows:

MS. DENOUDEN: I, Nannette Denouden, swear to tell the truth out of fear of, and admiration for, the God in which I serve.

EXAMINATION

BY MS. LAMB:

Q. Would you state your full name for the record, please.
A. For the record, my full name is Nannette Colleen Denouden

Q. And spell your last name.
A. D-e-n-o-u-d-e-n.

Q. And your current residence address, please?
A. P.O. Box 13123, Millcreek.

Q. And your actual street address?
A. That is my address of record.

Q. I need your street address, please.
A. P.O. Box 13123, Millcreek, Washington.

Q. Now I'm sure that you don't live inside of a post office box, so I need for you to give me your street address.
A. That is my address of record, Miss Lamb.

Q. Are you refusing to provide your street address?
A. I gave you my address of record. That's my answer.

Q. Are you refusing to provide your street address?
A. Miss Lamb, my answer is, I gave you my street address, my address of record, and it's P.O. Box 13123, Millcreek, Washington.

Q. As an attorney in this case, I am entitled to your street address. In order for us to serve process upon you, that has to be served in person, and I need to know if you're refusing to provide your street address.
A. My address of record, Ms. Lamb, is P.O. Box 13123, Millcreek, Washington, 98082.

Q. I accept your answer as a refusal to provide your street address.

MS. DENOUDEN: I object. I answered Ms. Lamb's question.

MS. LAMB: For the record, we had a discussion before the deposition began about whether or not Ms. Denouden could record the deposition separately by her own tape recorder. Initially my position was that she could not because it would not be the official record. However, I have since then agreed to let her go ahead and record the deposition, and she is doing so.

She has been advised that her recording is not an official record, and that the official record of the deposition is that that (sic) taken by the certified court reporter that is in presence, and that is Corri René.

MS. DENOUDEN: And I, Nannette Denouden, would like to state that I will bring this issue up in the proper court to determine if this recording that is being taken at the time that Miss Lamb's recording is being taken is indeed entitled to be one of the official recordings for the record. And I am moving pursuant to Rule 30(B) 2, paragraph 3, et al.

MS. LAMB: Moving for what?

MS. DENOUDEN: I am doing what I am doing pursuant to Rule 30 in recording this deposition.

Q. How long have you resided at your current location?
A. Since 1995.

Q. Where did you reside previous to that
A. In Mountlake Terrace.

Q. And what was your address?
A. At that time it was 22109 53rd Avenue West.

Q. And how long did you live there?
A. Approximately four years.

Q. What was the reason for relocating from Mountlake Terrace to Millcreek?
A. There was no specific reason.

Q. Does anybody reside with you at your current address?
A. What do you mean by reside with me?

Q. Does anybody live in the same premises with you?
A. What do you mean by live with me?

Q. Does anybody reside in the same premises that you reside in?
A. There is a person that resides in the same premises that I reside in, yes.

Q. Who is that person?
A. That person is not a party to this action.

Q. Who is that person?
A. That person is not a party to this action, is my answer.

Q. Are you refusing to provide the name of that person?
A. Miss Lamb, that person is not a party to this action and does not want to be a party to this action.

Q. Under the Rules of Civil Procedure, the only reason that you can refuse to provide an answer is if you're claiming a privilege.

Are you claiming a privilege relating to that person?

A. Miss Lamb, the question of who is residing in the residence with me is not relevant subject matter, and therefore I object to your question.

Q. You may object and your object is noted, but you still have to answer the question.

A. Well, the only thing I can answer further, Miss Lamb, is that the person who resides at that residence does not want to be a party to this suit.

MS. LAMB: Okay, I'll tell you what. I'm going to adjourn this deposition now, because it's clear to me that you're going to continue to refuse to provide answers to questions to me that I'm entitled to get. And I'm going to ask the court for sanctions for your failure to answer the question, and I'm going to ask to court that your deposition be taken in front of the judge.

Thank you. We're terminating it.

MS. DENOUDEN: I have a right to say something, don't I?

MS. LAMB: You can say whatever you'd like.

MS. DENOUDEN: For the record, ma'am. Miss Lamb, I am here, I arrived early for the deposition. I am ready to proceed with the deposition. My understanding of the law is that I can object, and I gave you specific reasons why I objected to not providing the name of the person who resides at the residence with me.

I don't know why that's reason enough to cancel the whole deposition, and I disagree that -- you're assuming that this is going to be the way the entire deposition is going to go. I disagree with that. I believe I am acting within the proper rules set out for discovery. I am here to participate, and I don't think one objection and giving the proper reason why is sufficient grounds to cancel this deposition.

I went through a lot of trouble to make the appointment to get here on such short notice. And I'm prepared, and I don't know what the problem is. I just feel that the questions that you ask I have a right to object to that.

MS. LAMB: Hang on a minute, I'm going to get my rule book and read to you the rule.

(Off -the-record- discussion.)

MS. DENOUDEN: I would like this for the record, that I am aware that I can object but that I must give an answer. I an aware of that. The deposition --

MS. LAMB: Then I need an answer to the question that's pending.

MS. DENOUDEN: If I could finish, that the deposition is to proceed, but that I object to that question because this person is not a party to the lawsuit. Or to any of this action.

Q. Are you going to provide that individual's name then?
A. Yes, I'll give you his name.

Q. Okay. And the name please?
A. Well, I think you need -- I would like to have something on record that you have not adjourned this deposition.

Q. We're still asking questions so the deposition is continuing, as long as you're going to provide the name in accordance with the rules.
A. For this particular question, could you repeat it so I can give you an answer?

Q. What is the name of the person who is residing with you at your current residence?
A. As I stated, this person isn't residing with me at this current residence. This person is living in his current residence, and his name is John.

Q. John, what is John's last name?
A. Denouden, D-e-n-o-u-d-e-n.

Q. What is his relationship to you?
A. He has no relationship to me.

Q. Is he a family member?
A. He is a family member.

Q. And what part of your family he? Is he your brother, is he your father?
A. He is a relative by marriage.

Q. Is he your husband?
A. He is not my husband.

Q. Is he a brother-in-law?
A. He is not my husband in the sense that you're using the term "husband."

Q. How is he connected to you? How is it that he has the same last name as you?
A. We're related because we were at one point married, but now we are separated.

Q. So you're currently legally married but you're not separated?
A. I am not saying that we're legally married. I--

Q. What is your legal relationship with John Denouden?
A. I can't say what the legal relationship is. I don't understand what you mean?

Q. Are you married to him now?
A. No, But we're separated, legally separated.

Q. Are you divorced from him?
A. No, I'm not.

Q. Are there legal separation papers that have been filed?
A. Yes, there have been.

Q. Are they filed in King County?
A. They would be filed in the county in which I reside.

Q. And what county is that?
A. That would be Snohomish County.

Q. And how long have you been married to Mr. Denouden?
A. We were married I believe around '79.

Q. And when were the legal separation papers filed?
A. I believe he filed them around '90 or '92; I'm not sure. I'm not sure on that.

Q. And no further proceedings have been taken to dissolve the marriage?
A. I have not taken any further proceedings.

Q. Has he?
A. I do not know?

Q. Anybody else resides in the current -- in your current residence with you?
A. No.

Q. And at your previous residence at 22109 53rd Avenue West in Mountlake Terrace, did anybody reside with you there?
A. That would have been in 1990? Did I say '90 that date?

Q. You said that you lived there prior to 1995.
A. Right. So that would have been John.

Q. Anybody else reside with you there?
A. No.

Q. Okay, now I'm going to ask you again what your current street address is.

A. And Miss Lamb, I would say that this is beginning to annoy. I have given my P.O. box as my residence, my legal residence.

Q. Again, are you refusing to provide that?

A. Miss Lamb, I think that question is designed to embarrass me, and I have given you my address of record, and it's P.O. Box 13123, Millcreek.

Q. Is there some privilege that you're claiming in terms of what your street address is?

A. Yes, ma'am, you could call it that.

Q. What is the privilege that you're claiming?

A. The privilege is that I do not want to involve the other person residing at that address in this matter, and who has no desire to be involved in this matter.

Q. What privilege are you claiming that exists under any kind of statute or law?

A. I am claiming that the person who lives at the address is not a party to this suit. I believe the question is irelevant (sic). I have my address on record. You served papers on me there before, it's worked in the past to some degree, and I object to that (question). I have tried to cooperate; I have given you my address of record.

Q. I am entitled to have your street address unless you're claiming a legal privilege, and you're not claiming any sort of a legal privilege that I can tell. And based upon that, I'm entitled to your street address, and I'm

entitled to get it on the record in this deposition.

A. Well, I didn't have much time to prepare, and so I guess I feel intimidated that you're looking up the law in front of me. It's delaying this proceeding, and I would like to say again that my street -- my address of record is P.O. Box 13123, Millcreek.

MS. LAMB: Okay. I would like the record to reflect that there has been no delay in the deposition the questions have been asked successively.

MS. DENOUDEN: And I would like to follow up, if I may, and say that the same question has been asked incessantly, and it's beginning to harass and annoy me.

I've answered the question. My address of record is P.O. Box 13123, Millcreek, Washington. I object because this question is designed to harasses and to embarrass me.

MS. LAMB: There's no question pending before you.

Q. Could you tell me what your date of birth is?

MS. DENOUDEN: I just wanted to clarify the question that I was objecting to was Miss Lamb's incessant request for my street address.

Q. What is your birth date, please?

A. I claim a privilege on this, ma'am, under FERPA, FERPA rules.

Q. I'm not asking you for any student records, I'm asking for you to tell me what your birth date is.
A. My birth date is on my student records, ma'am. I have to supply that to the university, and I'm currently enrolled as a student.

MS. LAMB: The deposition is over for the day. We will take it up in front of the judge.

MS. DENOUDEN: I would like to, if I may, say that the reason I did not supply my birth date is because it is privileged information. I have that information as a part of my student records, and I'm claiming privileges under FERPA, F-E-R-P-A, under Title 20, Public Law 93-380, Subsection 1232 G, 1232 H. It is the Family Educational Rights and Privacy Act, and Washington Administrative Code, WAC 478-40, et al.

And I would also like to say that, that is why I did not answer the question, and also that's -- another reason I can not give my street address. And I would -- I'd like the record to show that I did come to participate, to fully participate in this deposition. I have been inundated with the same questions, I've answered them, yet I objected. Yet I feel that there's no reason why this deposition could not continue. I have been subjected to embarrassment and intimidation. And the information that was requested was privileged communication information.

(Deposition concluded: 9: 55 a.m.)
(Signature reserved.)

App. 24

(Production of documents no. 228)

Notes 6/1/95

1. Is a student paper an education record?
   See WAC 478-140-018
   FERPA 20 USC § 1232g(a)(4)(A).
   Ans. yes.

   Implications:
   (a) Student has right to inspect - WAC 478-140-018.
   (b) UW may retain. Where-dept. 478140018.

2. Who owns the physical copy of the paper? Ans. UW

3. CR:
   (a) Who owns the CR on the paper?
   Ans: Denouden - unless the prof wrote part of it, or his contribution was such as would warrant joint work status.

   (b) What does Jacoby say? See his letter to Olswang.
   What position does the UW take at this time?
   Ans: UW will keep a copy of the work.

5. What can be done to defuse the situation?

App. 25

(Production of documents no. 230)

Conversation w/ Norm Rose 685-5220
5:30 6/13/92 (sic)

Student is afraid Prof. Jacoby will plagiarize her work or steal her ideas.

Norm sent her a letter stating the UW's position. The letter was actually drafted by Steve Olswang, although it was signed by Norm.

The position:	Prof may keep copy of paper.
rationale:	giving paper back to student would set bad precedent. Profs have legitimate reasons/needs to keep copies of student papers.

Issue is whether Prof can keep copy.

There are other disputes: e.g., Jacoby communicated on one occasion w/ student by contacting her at her local address. Student is upset about this.

Before taking any action: call Dan Jacoby 5-5365
Jane Decker (director)
5-5355

Check with Steve about WAC concerning political views. ←Steve Olswang

———————— ♦ ————————

Fourth Amendment
The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourteenth Amendment
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

34 CFR Part 99 Section § 99.37(2) Family Educational Rights and Privacy; What conditions apply to disclosing directory information? (Authority 20 U.S.C. 1232g(a)(5) (A) and (B))
(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of--

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all types

of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

20 § 1232(g) Family educational and privacy rights (verbatim pertinent text)

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(a) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (b), those records, files, documents, and other materials which--

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "educational records" does not include--

(I) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of

the maker thereof and which are not accessible to any person except a substitute;

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom the educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(4)(b) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other to

have access to such information without the consent of the parents of the student.

(d) Students' rather than parents' permission or consent
For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

Federal Rule of Evidence 501
Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings with respect to an element of a claim or defense as to which State law supplies the rule decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

Rule 502 (not enacted) Required Reports Privileged by Statute
A person, corporation, association, or other organization or entity, either public or private, making a return or report required by law to be made has a privilege to refuse to disclose and to prevent any other person from

disclosing the return or report, if the law requiring it to be made so provides. A public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report if the law requiring it to be made so provides. No privilege exists under this rule in actions involving perjury, false statements, fraud in the return or report, or other failure to comply with the law in question.

28 U.S.C. § 144 Bias or prejudice of judge
Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it was made in good faith.

28 U.S.C. § 455(a) (b)(1)(2)(3)(4) Disqualification of justice, judge, or magistrate
(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
(b) He shall also disqualify himself in the following

circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

28 U.S.C. § 636(b)(1)(A)

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this sub-

paragraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

28 U.S.C. § 1651 Writs
(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

FRCP 26(b)(1) Discovery Scope and Limits.
Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

> (1) ***In General.*** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Title 17 § 511 entitled Liability of States, instrumentalities of States, and State officials for infringement of copyright Section (a) as amended in Pub.L. 101-553, § 2(a)(2), November 15, 1990, 104 Stat. 2749: Any State, any instrumentalities of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of a copyright owner provided by sections 106 through 119, for importing copies of phonorecords in violation of section 602, or for any other violation under this title.

Washington Administrative Code Rules for the University of Washington 478-140-010 University Policy on Student Education Records

Public Law 93-380, The Family Educational Rights and Privacy Act of 1974, requires that the University adopt guidelines concerning the right of a student to inspect his or her education records, and guidelines concerning the release of personally-identifiable information to third parties. The act further provides that such a student has a right to a hearing in order to provide for the correction or deletion of inaccurate, misleading or otherwise inappropriate data. The act also provides that students be informed annually of the types of education records maintained by the university that are directly related to students.

Consistent with the act, this policy on student education records is established to insure that information contained in such records is treated in a responsible manner with due regard to the personal nature of the information.

RCW 34.08.050

Institutions of higher education considered state agencies for certain purposes. For the purposes of the state register and this chapter, an institution of higher education, as defined in RCW 34.05.010, shall be considered to be a state agency. [1989 c 175 32; 1977 ex.s. c 240 6.]